IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5681 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, : NO

JJJJ

Date of decision: 19/07/2000

ORAL JUDGEMENT

1. Rule. Mr. Pandya, learned AGP waives service of rule on behalf of the respondent authorities. Heard the learned advocates for the parties.

2. The petitioners have preferred this petition against the order passed by the Additional Chief Secretary (Appeals), Revenue department in SRD/Land/RJT/24/93, dated 19.5.1998 (Annexure F) rejecting the revision application preferred against the order passed by the Collector, Rajkot in Land/ Appeal/ Vashi- 2654,dated 30.10.1992 (Annexure E).

3. The facts in a narrow compass are that undisputedly , the petitioners have encroached upon 6 Gunthas of Government waste land out of survey No.333/1 of Rajkot taluka.The Mamlatdar passed an order dated 24.12.1976 observing that the petitioners have admitted encroachment. He,therefore,imposed certain penalty and stated that encroachment may be regularised. For that purpose, they may prefer an application within one month. Accordingly, an application was preferred by the petitioners which was rejected by the Collector by his impugned order, dated 30.10.1992 (Annexure E) on the ground that the price fixed for the land is very high and it would be beyond the capacity of the petitioners to pay the price and,therefore, it is not possible to accept the request for regularisation of encroachment. The said order was confirmed by the Additional Chief Secretary.

4. Affidavit in reply also reiterates the same thing.

5. Heard the learned advocates for the parties.

6. Having regard to various contentions raised, it is apparent that while passing the impugned order, the Collector has not assigned any reason for rejecting the application.There is nothing to indicate that the Collector has taken into consideration the Government Resolution No., Daban-1972-28765-L, dated 8.1.1980 and his order is not a reasoned order.

7. Attention of this court is drawn to the fact that the order passed by the Collector is not a reasoned order. Admittedly, the amount fixed for regularisation is not conveyed to the petitioners and the order is

passed on presumption that it would be beyond the capacity of the petitioners to tender that amount. No other reason is given for rejecting the application.

8. There is substance in the contentions raised by Mr. Thakker.The application has to be considered on merits and decided by a speaking order. Ends of justice will be met if the petitioners' case is considered by the authorities in light of the above referred resolution,dated 8.1.1980 and decision is taken by passing a reasoned and speaking order, after giving an opportunity to the petitioners of representing their case.

9. The impugned orders are ,therefore,quashed and set aside. The matter is remanded to the Collector, Rajkot for passing fresh order after affording an opportunity to the petitioners to represent their case. Decision will be taken after considering the relevant Government resolutions by passing a speaking order. Rule is accordingly made absolute. No costs.

(A.L. Dave, J.)
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